

August 14, 2002

Exemption No. 5100F
Regulatory Docket No. FAA-2001-10857

Mr. Neil R. Planzer
Executive Director
Department of Defense Policy Board on Federal Aviation
1480 Defense Pentagon
Washington, DC 20301-1480

Dear Mr. Planzer:

This is in response to your undated letter, filed on October 16, 2001, petitioning the Federal Aviation Administration on behalf of the Department of Defense (DOD) for an extension of and amendment to Exemption No. 5100, as amended. That exemption from §§ 91.117(a) and (b), 91.159(a), and 91.209(a) of Title 14, Code of Federal Regulations (14 CFR) permits the DOD to conduct air operations in support of drug law enforcement and traffic interdiction without meeting certain requirements pertaining to (1) aircraft speed, (2) cruising altitudes for flights conducted under visual flight rules, and (3) the use of aircraft position lights. The amendment you request would clarify the conditions and limitations of Exemption No. 5100, as amended, with respect to the use of lighted aircraft anticollision and position lights as required under § 91.209(a)(1) and (b).

In Exemption No. 5100, as amended, we originally granted the DOD an exemption from § 91.73(a), now § 91.209(a)(1), which requires the use of lighted aircraft position lights. Aircraft position lights usually consist of three lights, one on each wingtip and one on the aircraft's tail, that indicate the position and direction of the aircraft's flight in relation to an observer. Under this exemption, the DOD may conduct drug interdiction operations in aircraft without the use of aircraft position lights to avoid being seen by suspected drug traffickers. In granting this exemption, although we noted the importance of using aircraft position lights to meet a pilot's responsibility under § 91.67 to see and avoid other aircraft, we found that alternative methods of detecting other aircraft would provide an adequate level of safety.

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In 1999, you requested an extension of and amendment to Exemption No. 5100, as amended, to provide the DOD relief from § 91.209(b), which requires the use of lighted

anticollision lights on aircraft equipped with such lights. Aircraft anticollision lights, unlike aircraft position lights, consist of brilliant flashing lights designed to make an aircraft visible to other aircraft at night. We denied your request and stated that relying solely on a pilot and observer in DOD aircraft to visually detect all other aircraft, while the two are attempting to maintain visual contact with suspect aircraft, does not mitigate the collision hazard posed by operating an aircraft without lighted anticollision and/or position lights.

We recognize that aircraft anticollision and position lights assist pilots in seeing and avoiding other aircraft at night. We also acknowledge that the use of either lighting system might alert suspect aircraft to the presence of law enforcement aircraft nearby. We have allowed State and other Federal law enforcement agencies to operate their aircraft without lighted aircraft anticollision and/or position lights in support of drug law enforcement operations, provided the operators of such aircraft supplement the pilot's visual detection of other aircraft with a dedicated onboard observer and an additional resource capable of detecting all aircraft operating near the aircraft operating without lighted anticollision and/or position lights. Such resources may include primary radar equipment or spotter aircraft.

Therefore, provided the DOD employs these additional resources while conducting drug interdiction operations in aircraft without lighted anticollision and/or position lights, a grant of exemption from § 91.209(b) would not adversely affect safety. In addition, because of the redesignation of § 91.209 (61 FR 5151, February 9, 1996), we are clarifying that the DOD has relief from § 91.209(a)(1) not § 91.209(a). Last, for consistency with the relief granted, we must amend condition No. 4 to this exemption by changing "§ 91.209(a)" to "§ 91.209(a)(1), and (b)."

In your petition, you indicate that the conditions and reasons regarding public interest and safety, presented in the original petition upon which the exemption was granted, remain unchanged.

We have determined that good cause exists for not publishing a summary of the petition in the Federal Register because the requested extension of and amendment to the exemption would not set a precedent and any delay in acting on this petition would be detrimental to the DOD.

In addition, we have determined that the justification for the issuance of Exemption No. 5100, as amended, remains valid with respect to this exemption.

Please note that we have assigned a new docket number to this project (Docket No. FAA-2001-10857; previously Docket No. 25863). In an effort to allow the public to participate in tracking our rulemaking activities, we have transitioned to the Department of Transportation's online Docket Management System (DMS) at <http://dms.dot.gov>. This new docket system enables interested persons to view requests on, submit requests to, and download requests from the DMS to comply with 14 CFR § 11.63. Please submit future requests through the DMS.

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, Exemption No. 5100, as amended, is hereby further amended by (1) extending its September 30, 2002, termination date to September 30, 2004, unless sooner superseded or rescinded; (2) providing relief from § 91.209(a)(1) and (b) in addition to §§ 91.117(a) and (b) and 91.159(a); and (3) revising condition No. 4 to read as follows:

4. Operations in noncompliance with § 91.209(a)(1) and (b) are authorized only for those aircraft engaged in air interdiction operations and only when one of the following alternative means of deriving traffic information is used: (a) primary radar equipment capable of detecting all aircraft operating in the vicinity of the DOD interdiction aircraft, or (b) spotter aircraft operating in a position to visually detect other aircraft in the vicinity of the interdiction aircraft. Interdiction aircraft must maintain two-way radio communications with the spotter aircraft or the primary radar surveillance aircraft for the purpose of receiving traffic information regarding other aircraft operating in the vicinity. Only DOD interdiction aircraft are authorized to operate without lighted aircraft anticollision and/or position lights. Any other aircraft used by the DOD as spotter aircraft and/or primary radar surveillance aircraft must be operated in compliance with § 91.209(a)(1) and (b). Interdiction aircraft must operate the aircraft's position lights to the maximum extent practicable and may operate without lights only when necessary to avoid detection by elements engaged in illegal drug activities.

All other conditions and limitations of Exemption No. 5100, as amended, remain the same. This letter shall be attached to, and is a part of, Exemption No. 5100.

Sincerely,

/s/

Louis C. Cusimano
Acting Director, Flight Standards Service